



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Taylor Murphy, Jr.
Secretary of Natural Resources

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Director

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COMMONWEALTH OF VIRGINIA STATE AIR POLLUTION CONTROL BOARD WASTE MANAGEMENT BOARD CONSENT ORDER ISSUED TO HENRY BRABHAM

SECTION A: Purpose

This is a Consent Order issued under the authority of § 10.1-1182, 10.1-1184, and 10.1-1455(F) of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board and under § 10.1-1182, 10.1-1184, and § 10.1-1316(C) of the Code of Virginia (1950), as amended, by the State Air Pollution Control Board to Henry Brabham to resolve certain violations of environmental laws and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Waste Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Air Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.

An Agency of the Natural Resources Secretariat

6. "Order" means this document, also known as a Consent Order.
7. "Henry Brabham" means the individual owner of the Site.
8. "Site" means the structure located at 5151 North Fork Road, Ironto, Virginia.
9. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Henry Brabham owns and leases the Site in Ironto, Virginia. This site is leased to Brabham Petroleum Company and is subject to the Virginia State Air Pollution Control and the Virginia Solid Waste Management Laws and Regulations.
2. Russell Short, Inc. was contracted by Mr. Henry Brabham to demolish and dispose of a building servicing the gas station at the Site.
3. On Tuesday, June 8, 2004, DEQ staff observed smoke stemming from a pile of burning debris at 5151 North Fork Road. Upon inspection of the site, DEQ staff observed employees of Russell Short, Inc. conducting an open burn of mixed demolition debris. DEQ staff questioned the employees and was informed that the debris was from the demolition of the former building servicing the gas station.
4. The employees stated that they were contracted by Henry Brabham to remove the structure and dispose of it. The Russell Short, Inc. employees stated that all further questions need to be directed towards the Site owner, Mr. Henry Brabham.
5. Staff then attempted to contact Mr. Brabham at the storefront and was directed to a Mr. Ed Fortune, a site maintenance foreman. Mr. Fortune proceeded to describe the situation at the site and stated that Mr. Brabham had received approval from the local Fire Marshall to burn the demolition debris. Staff informed Mr. Fortune that the burning of was not allowed under DEQ regulations and that DEQ would pursue enforcement actions for this activity.
6. On July 24, 2004, DEQ issued a Notice Of Violation to Mr. Henry Brabham and Russell Short Excavating for violations of Virginia Air Pollution Control and Virginia Solid Waste Management Laws and Regulations. The observations above are cited under the following regulations.

Section 9 VAC 5-40-5620.C of the State Air Pollution Control Board Regulations states that no owner or other person shall cause or permit open burning for the disposal of petroleum based materials.

Section 9 VAC 5-40-5620.F of the State Air Pollution Control Board Regulations states that no owner or other person shall dispose of waste by open burning.

Section 9 VAC 20-80-80 of the Virginia Solid Waste Management Regulations, states the following:

A. Prohibition

1. No person shall own, operate, or allow to be operated on his property any sanitary landfill or other Site for the disposal, treatment or storage of solid waste in a manner that constitutes open dumping as provided for in Part IV (9 VAC 20-80-170 et seq.) of this chapter.
2. No person shall dispose of solid waste in open dumps as defined in Part IV of this chapter.

B. Any person who violates subsection A of this section shall immediately cease accepting additional wastes and shall initiate such cleanup or corrective actions as are required by Part IV of this chapter to alleviate the conditions that cause the Site to be classified as an open dump or to take other appropriate measures to abate improper management of waste.

Section 9 VAC 20-80-90 of the Virginia Solid Waste Management Regulations, states the following:

A. Prohibitions and duties

1. No person shall operate any landfill or other Site for the disposal, treatment or storage of solid waste without a permit from the director.
2. No person shall allow waste to be disposed of or otherwise managed on his property without a permit from the director.
3. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

B. Any person who violates 9 VAC 20-80-90.A shall immediately cease treatment, storage or disposal of any additional waste and shall initiate such removal, cleanup or corrective actions as required by Part IV of this chapter.

Section 9 VAC 20-80-180.B.7.a of the Virginia Solid Waste Management Regulations, states the following:

B. Any site, other than a municipal solid waste landfill as defined in subsection A of this section, that meets any of the following criteria shall be classified as an open dump:

7. Open burning.

- a. The site or practices that engages in open burning of residential, commercial, institutional or industrial solid waste.

7. On August 11, 2004, DEQ staff met with Mr. Henry Brabham to discuss the aforementioned issues. During this meeting, Mr. Brabham stated that he had contacted the Ironto Volunteer Fire Department as to the legality of burning the debris. He stated that the Volunteer Fire Chief provided verbal approval for the burning and suggested the location of the burn site. Mr. Brabham also informed DEQ staff that the employees of Russell Short, Inc. were acting upon his instructions to burn the debris.
8. Upon learning of the conflict in burning, Mr. Brabham stated that he had the employees cover the debris pile with dirt and transport the remainder of demolition materials to the Roanoke Valley Resource Authority. Mr. Brabham provided DEQ staff with copies of the invoices for disposal.
9. On August 16, 2004, DEQ staff met with Mr. Russell Short to discuss the aforementioned issues. Mr. Short stated that his employees were acting as contractors and that Mr. Brabham instructed his employees to burn the debris. DEQ staff then provided Mr. Short with a copy of Virginia's Open Burning Regulations.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316 (Air), and §10.1-1455 (waste), and upon consideration of Va. Code § 10.1-1186.2, the Air Board and the Waste Board orders Henry Brabham, and Henry Brabham voluntarily agrees, to pay a civil charge of One Thousand Eight Hundred Forty Dollars (\$1,840.00) in settlement of the violations cited in this Order.

This civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Henry Brabham's Federal ID number or Social Security Number if Henry Brabham does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Air Board and/or Waste Board may modify, rewrite, or amend the Order with the consent of Henry Brabham, for good cause shown by Henry Brabham, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Henry Brabham by DEQ on July 24, 2004. This Order shall not preclude the Air Board, Waste Board, or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Site as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Henry Brabham admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Henry Brabham consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Henry Brabham declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Henry Brabham to comply with any of the terms of this Order shall constitute a violation of an order of the Air Board and Waste Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Air Board, Waste Board, or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Henry Brabham shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Henry Brabham shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Henry Brabham shall notify the DEQ

Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Henry Brabham. Notwithstanding the foregoing, Henry Brabham agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director, Air Board, or Waste Board terminates the Order in his or its sole discretion upon 30 days written notice to Henry Brabham. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Henry Brabham from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Henry Brabham voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 12-29, 2004.

Steven A. Dutch
for Robert G. Burnley, Director
Department of Environmental Quality

Henry Brabham voluntarily agrees to the issuance of this Order.

By: Henry J. Brabham

Date: October 26, 2004

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 26th day of
October, 2004, by Henry J. Brabham, IV, who is
(name)

Owner for Henry Brabham, on behalf of the landowner.
(title)

[Signature]
Notary Public

My commission expires: June 30, 2004